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RODERICK K. APPLETON, Appellant)	
)	
and)	Docket No. 04-43
)	Issued: March 12, 2004
TENNESSEE VALLEY AUTHORITY,)	
COLBERT FOSSIL PLANT, Sheffield, AL,)	
Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

On October 1, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 30, 2003. Since appellant filed his appeal within a year of the Office's June 30, 2003 decision, the Board has jurisdiction to review the merits of the claim.

The issues are: (1) whether appellant is entitled to a schedule award for his hearing loss; and (2) whether the Office properly rescinded its authorization for appellant to have a hearing aid.

By letter dated May 22, 2003, the Office accepted appellant's claim for a binaural hearing loss. The Office authorized appellant to have a hearing aid for each ear evaluation and encouraged trial or initial rental periods of hearing aids to see if they would help. On June 16,

2003 appellant filed a claim for a schedule award. The Office referred appellant to Dr. Sage K. Copeland, a Board-certified otolaryngologist, to assess the nature of appellant's hearing loss. In an undated report received by the Office on January 22, 2003, Dr. Copeland diagnosed mild left neurosensory high frequency loss and moderate right neurosensory high frequency loss which was due to appellant's exposure to noise at work. His reasons for his conclusion were the degree of loss, the degree of exposure, the standard threshold shift that was present, ear protection and the annual audiogram. The December 19, 2002 audiogram showed that the frequencies in appellant's right ear at 500, 1,000, 2,000 and 3,000 cycles per second were 15, 15, 5 and 15, and the frequencies in appellant's left ear at those frequencies were 15, 10, 15 and 20.

In a report dated May 28, 2003, the district medical adviser reviewed the results of the December 19, 2002 audiogram. He applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) to the results of that audiogram and determined that appellant had a zero percent binaural loss.

By letter dated June 11, 2003, a hearing aid specialist, Don W. Littrell, stated that appellant had a 10.25 binaural hearing loss consisting of a 12.2 percent loss in the right ear and an 8.3 percent loss in the left ear. He stated that appellant would benefit 100 percent from using hearing aids.

By decision dated June 30, 2003, the Office found that appellant was not entitled to a schedule award for his hearing loss and that the medical evidence established that he would not benefit from hearing aids.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second,

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ A.M.A., *Guides* at 224 (4th ed. 1993).

the losses at each frequency are added up and averaged.⁵ Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss.⁷ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six, to arrive at the amount of the binaural loss.⁸ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

In his report dated May 28, 2003, the district medical adviser reviewed the results of the most recent audiogram dated December 19, 2002. Using the A.M.A., *Guides* (5th ed. 2001), he totaled the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear, 15, 15, 5 and 15, respectively, at 50, which he divided by 4 to obtain the average hearing loss at those frequencies of 12.5. The district medical adviser then subtracted the 25 decibel fence to obtain a hearing impairment of 0 in the right ear. He multiplied 0 by the established factor of 1.5 to obtain a 0 percent monaural hearing loss in the right ear.

The district medical adviser totaled the decibel losses at the applicable frequencies for the left ear, 15, 10, 15 and 20, at 60, which he divided by 4 to obtain the average hearing loss at those frequencies of 15. He subtracted the 25 decibel fence from 15 to obtain a hearing impairment of 0 in the left ear. The district medical adviser multiplied 0 by the established factor of 1.5 to obtain a 0 percent monaural loss in the left ear. He multiplied the zero percent loss in one ear by five, added the zero percent loss in the other ear, and divided the sum by six to calculate appellant’s binaural hearing loss at zero percent.

In a June 11, 2003 report, the hearing specialist, Mr. Littrell, opined that appellant had a binaural loss of 10.25 percent. However, his opinion is of no probative medical value because Mr. Littrell is not a physician within the meaning of the Act.¹⁰

CONCLUSION

The Board finds that the district medical adviser applied the proper standards to the December 19, 2002 audiogram results and properly determined that appellant had a zero percent binaural loss. The Office’s decision on this issue is affirmed.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Donald E Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ *See Peggy Ann Lightfoot*, 48 ECAB 490, 491, n. 3 (1997). 5 U.S.C. § 8101(2).

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Act¹¹ provides that the United States shall furnish to an employee, who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid.

The Board has long held that the power to annul an award is not an arbitrary one and that an award of compensation can only be set aside in the manner provided by the compensation statute. It is well established that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office decides it erroneously accepted the claim. To support rescission of acceptance of a claim, the Office must show that it based its decision on new evidence, legal argument and/or rationale.¹² In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation for its rationale for rescission.¹³

ANALYSIS

When it accepted appellant's claim for a binaural hearing loss on May 22, 2003, the Office authorized hearing aids for appellant. However, by stating in its June 30, 2003 decision that appellant would not benefit from hearing aids, the Office effectively rescinded its authorization for appellant to have hearing aids. The Office provided no explanation for its rescission. It did not refer to new evidence or present a new legal argument or rationale. The Office's rescission of its authorization for a hearing aid was therefore improper.

CONCLUSION

The Office's rescission of its authorization for hearing aid for appellant was improper because it provided no explanation justifying the change in its decision. The Office's decision on this issue must therefore be reversed.

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Stephen N. Elliot*, 53 ECAB ____ (Docket No. 01-363, issued July 12, 2002); *Edward W. Malaniak*, 51 ECAB 279, 280 (2000).

¹³ *Doris J. Wright*, 49 ECAB 230, 236 (1997).

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2003 decision of the Office of Workers' Compensation Programs be affirmed in part and reversed in part consistent with this decision.

Issued: March 12, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member